

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Audley Casanova,

Plaintiff/Appellant

vs

Case No. 1:00-cv-579

Paul Byers,

Defendant/Appellee

**ORDER ASSESSING FULL FILING
FEE FOR FAILURE TO COMPLY
WITH DEFICIENCY ORDER**

(Spiegel, J.)

On May 6, 2004, the Court ordered plaintiff/appellant to submit an application and affidavit to proceed *in forma pauperis* and a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of the notice of appeal or pay the full appellate filing fee within thirty (30) days of the date of the Deficiency Order. (See Doc. 46). Plaintiff/appellant was advised that his failure to comply with the Deficiency Order may result in the dismissal of his appeal by the Court of Appeals and the assessment of the entire filing fee by the District Court. Plaintiff/appellant was also advised that if his appeal is dismissed for failure to comply with the Deficiency Order, the appeal would not be reinstated despite the payment of the full filing fee or subsequent correction of the deficiency. *Id.*

To date, plaintiff/appellant has yet to comply with the Court's Deficiency

Order. In his response to the Court's deficiency order, plaintiff argues the Prison Litigation Reform Act does not apply to this case "because he is appealing the denial of habeas relief under FRCVP 60(b)" and no docketing fees are required. (Doc. 48 at 2). Plaintiff is incorrect. Plaintiff's underlying action is one for monetary relief pursuant to the diversity jurisdiction of the Court, and not for habeas corpus relief. Accordingly, plaintiff/appellant is assessed the full filing fee of \$255.00. *See McGore v. Wrigglesworth*, 114 F.3d 601, 609 (6th Cir. 1997).

A copy of this Order shall be sent to the Clerk of the Sixth Circuit Court of Appeals.

IT IS SO ORDERED.

Date: June 16, 2004

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge